

ENTERED

June 05, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DINAH RINCON,

Plaintiff,

VS.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Defendant.

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CIVIL ACTION NO. H-18-2853

ORDER

In July 2018, Dinah Rincon sued Philadelphia Indemnity Insurance Company in state court, alleging violations of the Texas Insurance Code, breach of contract, and breach of the duty of good faith and fair dealing. (Docket Entry No. 1-5 at 4). Philadelphia Indemnity answered and removed in August 2018. (Docket Entry Nos. 1, 1-5). In May 2019, the company moved to replead under Federal Rule of Civil Procedure 81(c) and, alternatively, for leave to amend its answer. (Docket Entry No. 18). Rincon responded. (Docket Entry No. 23). Philadelphia Indemnity then moved for summary judgment in June 2018. (Docket Entry No. 24).

Rule 81(c) governs the applicability of the Federal Rules after removal, not whether the court should grant leave to amend after the deadline to do so has passed. *See* FED. R. CIV. P. 81(c)(2). Instead, Rule 16(b) controls. *See Marathon Fin. Ins., Inc., RRG v. Ford Motor Co.*, 591 F.3d 458, 471 (5th Cir. 2009). The court's October 26, 2018, Scheduling and Docket Control Order required the parties to amend by November 30, 2018. (Docket Entry No. 9). As a result, Philadelphia Indemnity must satisfy Rule 16(b)'s "good cause" standard. Because the company fails to explain a basis for the court to find good cause, the motion for leave is denied, without prejudice. (Docket Entry No. 18).

Rincon must respond to Philadelphia Indemnity's motion for summary judgment no later than **June 28, 2019**. The court will hear argument on **July 15, 2019, at 2:00 p.m.** The docket call set for July 26, 2019, is reset to **August 16, 2019, at 9:00 a.m.**

SIGNED on June 5, 2019, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, stylized "L" and "R".

Lee H. Rosenthal
Chief United States District Judge